
(2018) 02 DEL CK 0478

In the Delhi High Court

Case No : Civil Suit (OS) No. 148 Of 2016, Miscellaneous Application No. 6376 Of 2016

National Building Construction Corporation

APPELLANT

Vs

Suraj Lal Tiwari & Ors

RESPONDENT

Date of Decision : 19-02-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Order 10, Order 12 Rule 6, Order 7 Rule 11, Order 21 Rule 11

New Delhi Municipal Council Act. 1994 — Section 247(2)

Citation : (2018) 02 DEL CK 0478

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sanjeev Mahajan, Umesh Kumar Choubey

Judgement

Rajiv Sahai Endlaw, J

1. The plaintiff has instituted this suit (i) for recovery of possession of portion of property No.69, Golf Links, New Delhi; (ii) for recovery of

Rs.16,45,000/- towards mesne profits for unauthorised use and occupation from 1st April, 2013 till the institution of the suit; (iii) for recovery of

pendente lite and future mesne profits @ Rs.47,000/- per month from 1st March, 2016 till possession; (iv) for mandatory injunction directing the

defendant No.3 New Delhi Municipal Council (NDMC) to remove the unauthorised construction raised by the defendants No.1&2 on the property;

and, (v) for mandatory injunction directing the defendants No.1&2 to themselves remove the unauthorised construction as per demolition order dated

17th March, 2015.

2. It is the case of the plaintiff (a) that the plaintiff is a Government of India Enterprise under the aegis of Ministry of Urban Development and a

company incorporated under the Companies Act, 1956; (b) that the plaintiff was allotted plot No.69, Golf Links, New Delhi vide allotment letter no.L-

II-1 (872)/91/296 dated 7th May, 1991 issued by the Land & Development Office (L&DO) of Ministry of Urban Development; (c) that possession of

the said plot was handed over to the plaintiff by the L&DO at the time of allotment; (d) that the plaintiff is in possession of the said plot of land till now

and has constructed a boundary wall thereon; (e) that the plaintiff had deputed one of its employee i.e. defendant No.1 for security of the aforesaid

plot; (f) that the defendant No.1 superannuated on 31st March, 2013 and was required to remove himself from the property; (g) that instead, the

defendant No.1 along with his wife defendant No.2 Smt. Saroj Bala trespassed into a portion of the said plot, without the knowledge and permission of

the plaintiff and constructed a temporary jhuggi/hutment/porta cabin thereon; (h) that total area of 490 sq. ft. has been illegally occupied by the

defendants No.1&2; (i) that the plaintiff, on coming to know of the activities of the defendants No.1&2, engaged a security agency to secure

possession of the plot and to prevent further unauthorised construction; (j) that the plaintiff also lodged a complaint with the defendant No.3 NDMC of

the unauthorised construction carried out by the defendants No.1&2; (k) that the defendant No.3 NDMC, after issuing a show cause notice to the

defendants No.1&2, passed a demolition order dated 17th March, 2015 with respect to unauthorised construction carried out by the defendants

No.1&2; (l) that the defendant No.2 filed a suit for injunction to restrain the defendant No.3 NDMC from demolishing the unauthorised construction;

in the said suit, the defendant No.2 admitted that the plaintiff was the owner of property No.69, Golf Links, New Delhi but claimed that the plaintiff

had permitted defendant No.1 to reside in the property and the defendants No.1&2 should be provided alternative residence before they are compelled

to vacate the property; (m) that the learned Civil Judge before whom the aforesaid suit was pending impleaded the plaintiff as defendant in the suit;

(n) that the plaint in the said suit was rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC); (o) that the defendant No.1

served advance copy of an appeal under Section 247(2) of the NDMC Act, 1994 purportedly preferred before the Appellate Tribunal, Municipal

Corporation of Delhi (ATMCD) against the demolition order; however no notice from the ATMCD was received; and, (p) that the market rent of the

area of 490 sq. ft. Occupied by the defendants No.1&2 is Rs.47,000/- per month and the plaintiff is entitled to mesne profits/damages for use and

occupation at the said rate of Rs.16,45,000/- from the date of superannuation of the defendant No.1 i.e. 1st April, 2013 till the institution of the suit.

3. The suit came up before this Court first on 28th March, 2016 when, while issuing summons of suit and notice of application for interim relief the

defendants No.1&2 were restrained from trespassing into remaining part of the plot and also directed to appear in person on 22nd April, 2016. On

22nd April, 2016, statement of defendants No.1&2 under Order X of CPC was recorded. The order dated 22nd April, 2016 records that defendants

No.1&2, in their statement deposed (i) that neither of them have any title to the property; (ii) that their stand was that the property was an open park /

Government land; (iii) that they were denying the ownership of the plaintiff; (iv) that the defendant No.2, when confronted with the admission in plaint

filed in the injunction suit before the Civil Judge, of ownership of the plaintiff, stated that the property belonged to the plaintiff. Since the defendants

No.1&2 denied the title of the plaintiff to the property and the plaintiff along with the plaint had produced a photocopy of the allotment letter dated 7th

May, 1991 issued by L&DO in respect of the property, vide order dated 22nd April, 2016, the plaintiff was directed to produce the original title

documents and the defendants were directed to produce a copy of the appeal filed before the ATMCD.

4. The defendants No.1&2 have also filed a joint written statement.

5. The plaintiff has filed an application under Order XII Rule 6 of CPC.

6. The defendants No.1&2 in their written statement have pleaded (A) that the plaintiff has claimed possession on the basis of title but has not placed

any title documents in its favour before this Court; (B) that the defendants No.1&2 are residing within the property for last 26-27 years continuously,

uninterrupted and without any hindrance; (C) that the defendant was looking after the plot in question and has been living therefore last 26/27

years; (D) admitting that the defendant No.1 retired on 31st March, 2013; (E) that the defendants No.1&2 had made admission that the property

belonged to the plaintiff, not based on any legal knowledge; and, (F) that as the defendants were taking care of the suit property hence they

assumed that the suit property belonged to the plaintiff however the plaintiff

should be put to strict proof regarding the ownership??.

7. Vide order dated 14th September, 2017, the suit was posted before the Joint Registrar on 2nd November, 2017 to enable the plaintiff to tender the

documents of its ownership and for cross-examination by the defendants No.1&2. The plaintiff, on 20th November, 2017 before the Joint Registrar,

has examined its Deputy General Manager (Legal) and who has proved copy certified by L&DO of the allotment letter of the property in favour of

the plaintiff. The said witness of the plaintiff was cross-examined by the counsel for the defendants and during the cross-examination has admitted

that till date, there is no lease deed or sale deed with respect to the plot in favour of the plaintiff and till date the plaintiff has not constructed any guest

house or residence, for which purpose the plot was allotted to the plaintiff.

8. In the aforesaid state of affairs, I have enquired from the counsel for the defendants No.1&2, as to what is the defence of the defendants No.1&2

to the suit insofar as for the relief of recovery of possession. As far as the aspect of mesne profits is concerned, the Court, even without ordering any

enquiry, can on the basis of judicial notice and the locality to which the suit pertains, fix a rate thereof.

9. Arguments of the counsel for the defendants No.1&2 are only on compassionate grounds.

10. Such compassionate ground do not entitle the defendants No.1&2 to continue in unauthorised occupation of the plaintiff's property.

11. As far as the plea of the defendants No.1&2 and as urged by the defendant No.2 also appearing in person along with defendant No.1 is

concerned, of there being no registered document of title and merely a letter of allotment in favour of the plaintiff, I may mention that the Delhi

Development Authority (Disposal of Developed Nazul Land) Rules, 1981 as the subject land is, provide for a title to be created in the allottee of the

land, from the date of allotment on the terms prescribed in the Rules and contained in the lease to be executed. Valuable right in land thus comes into

existence on date of allotment and which is a title on basis of which the allottee can institute a suit for recovery of possession. This question is no

longer res integra and reference in this context may be made to K.K. Birla Academy Vs. DDA MANU/DE/1156/2004, Delhi Development Authority

Vs. Pushpendra Kumar Jain (1994) Supp. (3) SCC 494 and Delhi Tamil Education

Society Vs. Directorate of Education 2012 SCC Online Del 1767.

12. Moreover, the defendants have admitted ownership of plaintiff and having come into possession through the plaintiff. It is thus clear that the plaintiff is the owner of the property.

13. Though the defendant No.2, arguing personally before the Court has contended that her father was in possession of the property since much prior to the date of allotment in favour of the plaintiff but the defendants No.1&2 have not filed a single document of occupation since prior to the allotment

letter in favour of the plaintiff and the said plea is also contrary to written statement and statement under Order X of CPC.

14. As far as the other reliefs claimed in the plaint are concerned, the counsel for the plaintiff, on enquiry, states that all dues of the defendant No.1

have been released by the plaintiff and no pension is payable by the plaintiff to the defendant No.1. On enquiry, it is further informed that there is an

order of interim stay by the ATMCD qua the demolition order passed by the defendant No.3 NDMC.

15. Thus, the relief of mandatory injunction, as sought, cannot be granted.

16. As far as the claim of the plaintiff for mesne profits is concerned, assessing the same on the lower side, mesne profits are assessed at Rs.5,000/-

per month.

17. A decree is accordingly passed, in favour of the plaintiff and jointly and severally against the defendants No.1&2, (a) of recovery of possession of

the entire portion of plot No.69, Golf Links, New Delhi in occupation of the defendants No.1&2 and as also shown in the site plan filed by the plaintiff

along with the plaint and on which today, for the sake of identification, Ex.C-1 is put; and, (b) of recovery of mesne profits of Rs.5,000/- per month

with effect from 1st April, 2013 till the date of removal of the defendants No.1&2 from the property. The plaintiff shall also be entitled to costs of the

suit from the defendants No.1&2.

18. Decree sheet be drawn up.

19. On oral request of the counsel for the plaintiff in terms of Order XXI Rule 11 of CPC, warrants, (a) of recovery of possession of the entire portion

of plot No.69, Golf Links, New Delhi in occupation of the defendants No.1&2 and as shown in red colour in the site plan Ex.C-1; and, (b) of

attachment by seizure of all the goods of the defendants No.1&2 lying at the said site, are also issued.

20. On the plaintiff taking requisite steps, warrants of possession and attachment be issued returnable on 6th March, 2018.